

WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE

A PROFESSIONAL LIMITED  
LIABILITY COMPANY



Seventh Floor  
1401 Eye Street, N.W.  
Washington, DC 20005

Telephone: (202) 467-6900  
Fax: (202) 467-6910  
Web site: www.wcsr.com

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Michael H. Shacter  
Direct Dial: (202) 857-4494  
Direct Fax: (202) 261-0005  
E-mail: mshacter@wcsr.com

August 2, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**RECEIVED**

**AUG - 2 2004**

Federal Communications Commission  
Office of Secretary

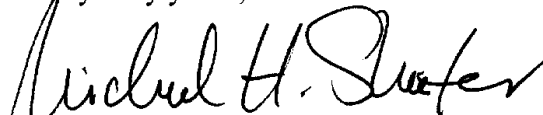
**Re: MB Docket No. 04-217  
RM-10863**

Dear Ms. Dortch:

Transmitted herewith on behalf of Sutton Radiocasting Corporation, Petitioner in the above-referenced rule making, are an original and four (4) copies of its Comments.

Should any further information be desired in connection with this matter, please communicate with this office.

Very truly yours,



Michael H. Shacter

Enclosure

cc: Local Public File

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**Before the  
Federal Communications Commission  
Washington, DC 20554**

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AUG - 2 2004

In the Matter of

Federal Communications Commission  
Office of Secretary

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations,  
(Clayton, Georgia and Sylva, North Carolina)

MB Docket No. 04-217  
RM-10863

**COMMENTS OF SUTTON RADIOCASTING CORPORATION**

Sutton Radiocasting Corporation ("Sutton"), by its attorneys, pursuant to Sections 1.415 and 1.419 of the Commission's rules, submits herewith its comments with respect to the *Notice of Proposed Rulemaking* in the referenced matter.

1. Sutton is the licensee of Station WRBN(FM), Channel 281A, Clayton, Georgia. On June 30, 2003, Sutton submitted its Petition for Rulemaking, proposing to amend the FM Table of Allotments by reallocating Channel 281A from Clayton, Georgia, to Sylva, North Carolina.

2. In support of its Petition, Sutton pointed out that, among other things, the adoption of its proposal would serve the public interest as the move will eliminate current grand-fathered short-spacing between WRBN(FM) and WHLC(FM), Highlands, North Carolina. The proposed transmitter site for WRBN(FM) is fully spaced in accord with Section 73.207 of the Commission's rules.

3. In addition to eliminating short-spacing, Sutton pointed out that the substitution of Sylva for Clayton as WRBN(FM)'s community of license would result in a preferential arrangement of allotments. The substitution would provide the larger community of Sylva with its second local aural transmission service.

4. In its *Notice of Proposed Rule Making* (the “Notice”), the Commission expressed doubt that the proposed reallocation will result in a preferential arrangement of allocations. The Notice placed special emphasis on the fact that the proposal would result in Clayton losing its only fulltime broadcast nighttime transmission service, while providing Sylva with two fulltime stations.

5. Since the time Sutton originally filed its Petition for Rulemaking on June 30, 2003, the situations of Clayton and Sylva have changed. Between January 26 and January 30, 2004, the Commission opened a filing window for proposals for new AM stations and major modifications to authorized AM facilities. As a consequence, Tugart Properties, LLC filed an application for a new fulltime AM station for Clayton (BNP- 20040126APN).<sup>1</sup> During the same window, WRGC, the fulltime station currently licensed to Sylva, applied to change its frequency to 540 kHz and change its hours of operation to daytime only (BMJP- 20040126APU). Indeed, it appears likely that the situations of the two communities will be reversed from their positions when the petition for rule making was first filed. Without taking WRBN into account, Sylva will only have daytime AM coverage, while Clayton will have a fulltime AM station.

6. In view of the shifting circumstances since its original Petition for Rulemaking was filed, Sutton submits that the public interest will be best served by its proposal, by bringing fulltime local service to a community that soon will only be served only by a daytime AM station.

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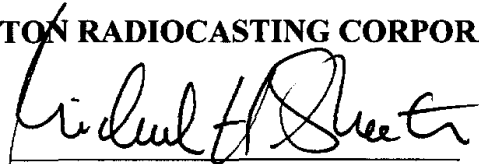
<sup>1</sup> WGHC the daytime station currently licensed to Clayton has filed to move to Mount Holly, NC (BMJP- 20040126APR). Accordingly, if WGHC's application and the application of Tugart Properties are successful, Clayton will have one fulltime AM station, instead of the one daytime station that now serves the community.

7. Sutton restates its present intention to file an application to effectuate its proposal if the Commission grants its Petition for Rule Making.

Respectfully submitted,

**SUTTON RADIOCASTING CORPORATION**

By:



John F. Garziglia  
Michael H. Shacter  
Its Attorneys

**WOMBLE CARLYLE SANDRIDGE & RICE, PLLC**

1401 I Street, NW  
Seventh Floor  
Washington, DC 20005  
(202) 857-4455  
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